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RECENT IMPORTANT DECISIONS.

BANKRUPTCY—SURETY'S RIGHTS TO SUBROGATION—PREFERRED CLAIM.—A bankrupt put in a bid for furnishing certain boilers for the United States, giving a bond for the faithful performance of his contract, with complainant as surety. Upon default being made by the bankrupt, the Government recovered judgment against the surety on the bond. The surety then filed its claim against the bankrupt's estate, claiming to have been subrogated to the rights of the United States as a preferred creditor, under Rev. St. §§3466, 3468 (U. S. Comp. St. 1901, p. 2314), which provide that "whenever any person indebted to the United States is insolvent, the debts due the United States shall be first satisfied," and that a surety paying his principal's debt on a bond like the one in question shall be subrogated to the rights of the United States as a preferred creditor. The trustee in bankruptcy contended that under Bankruptcy Act, 1898, c. 541, §64, 30 Stat. 663 (U. S. Comp. St. 1901, p. 3447); such a preference could not be allowed. *Held*, that §64 of the Bankruptcy Act did not lessen petitioner's rights under Rev. St. §§3466, 3468, and that the claim was properly preferred. *Title Guaranty & Surety Co. v. Guarantee Title & Trust Co.* (1909), — C. C. A., 3rd Cir. —, 174 Fed. 385.

Although §64 of the Bankruptcy Act clearly fails to authorize such a preference, since petitioner's claim is not a "tax," still, it is a fundamental rule of statutory construction that legislative enactments do not apply to sovereign bodies unless they are clearly intended. *U. S. v. Herron*, 20 Wall. 251, 22 L. Ed. 275. Hence, it seems clear that the Bankruptcy Act was not intended to repeal §§3466, 3468 *supra*. The decision accords with the view of text writers as to the probable construction of the two sections when taken together. *COLLIER, BANKRUPTCY*, Ed. 7, p. 728.

BILLS AND NOTES—NEGOTIABILITY—EFFECT OF WORDS "NOT TRANSFERABLE" ADDED TO NEGOTIABLE NOTE.—Plaintiff, a holder in due course, brings suit to recover the amount of a promissory note. In the lower left hand corner of the note, was the abbreviation "No" followed by a blank space an inch long, then the word "Due" with another blank space. The letter "t" was added to the abbreviation "No" and in a somewhat smaller and contracted hand the word "transferable" was written in the remainder of the short blank space. *Held* (KELLOGG and SEWELL, JJ., dissenting), that the note was non-negotiable and there could be no recovery on the same. *Tanner's National Bank of Catskill v. Lacs, et al.*, (1909), 120 N. Y. Supp. 669.

The majority of the court held that the plaintiff was charged with notice of the character of the note, and while the words "not transferable," as written might deceive some men, still the defendants were guilty of no fraud, or negligence in making, indorsing or delivering the note. The minority, however, contended that when the defendants elected to issue their note in negotiable form and then put upon the paper, in an unusual unexpected place, a notice that it was not transferable, they took the chance whether what they

intended as a notice would actually give notice. As a general rule a memorandum or indorsement upon a bill or note intended as a part of the contract will modify or affect the contract, and will bind all parties to the instrument, and all those who have, or legally are presumed to have, notice thereof. See 2 RANDOLPH, COMM. PAPER, §190; 4 DANIEL, NEG. INST., §§154, 1407 and notes; *Gift v. Hall*, 1 Humph. 480; *Fletcher v. Blodgett*, 16 Vt. 26, and *Jones v. Fales*, 4 Mass. 245, where the words ["Foreign Bills"] were written on the margin of the note and the same was held non-negotiable. In *Costelo v. Crowell*, 127 Mass. 293, LORD, J., said; "Any language put upon any portion of the face or back of a promissory note, which has relation to the subject matter of the note, by the maker of it before delivery, is a part of the contract." No case has been found deciding the precise point determined in the principal case, but the decision of the majority seems to be in accord with reason, and especially with the facts of the case.

BILLS AND NOTES—TRANSFER OF NOTE BY INDORSEMENT—WHAT LAW GOVERNS THE INDORSEER'S CONTRACT.—Plaintiff brings suit to recover the amount of a note executed and delivered in 1901 in California, secured by mortgage on land in that state, and non-negotiable by the local law, and which was transferred by indorsement by the defendants in New Jersey after the passage of the Negotiable Instruments Act of April 4, 1902, (P. L. p. 583). Held, that the validity and effect of the contract of the indorsers were determined by that act and plaintiff could recover. *Mackintosh v. Gibbs et al.* (1909), — N. J. —, 74 Atl. 708.

In general the indorsement of a note or bill is a new distinct contract, which is governed, as to its nature, validity, interpretation, and effect by the law of the state where it is made. *Aymar v. Sheldon*, 12 Wend. 439, 27 Am. Dec. 137; *Ballingalls v. Gloster*, 3 East. 482; *Field v. Holland*, 6 Cranch (U. S.) 8, 3 L. Ed. 136; *Glidden v. Chamberlin*, 167 Mass. 486, 46 N. E. 103, 57 Am. St. Rep. 479; *Spies v. Nat. City Bank*, 174 N. Y. 222, 66 N. E. 736, 61 L. R. A. 193; *Douglas v. Bank of Commerce*, 97 Tenn. 133, 36 S. W. 874. In *Gay v. Rainey*, 89 Ill. 221, 31 Am. Rep. 76, a note was executed in Illinois and sent to a payee in Louisiana, who indorsed and returned it to the makers, who negotiated it in the former state, and the indorsement was held to be governed by the law of Illinois. See *Wooley v. Lyon*, 117 Ill. 244, 6 N. E. 885, 57 Am. Rep. 867. The principal case is in accord with the previous New Jersey decisions, and is sustained by reason and authority, and within the spirit of the Negotiable Instruments Act.

BOUNDARIES—PRIVATE WAY—TITLE TO FEE—PRESUMPTION.—Thomas Seery opened a private pass-way 22 feet wide on a lot of land less than an acre in size, which way extended from Mattatuck Street to a canal owned by a third party. He later erected houses upon this land, four facing the pass-way, known as Seery Place, and two facing Mattatuck Street. Katherine Seery, who succeeded to the ownership and possession of the whole property, conveyed it all away to various parties, unless with the exception of Seery Place. One of these lots was conveyed as bounded "westerly on Seery Place." Subsequently she conveyed her interest and title in Seery Place to the plaintiff.